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Supreme Court of the United States.

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WHITE vs. GREENHOW, No. 589.
CARTER vs. GREENHOW, No. 590.
MOORE vs. GREENHOW, No. 905.
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BRIEF OF ATTORNEY GENERAL OF VIRGINIA, FOR APPELLEE.

Brief of Attorney General of Virginia for Appellee, who is City Treasurer of Richmond, Virginia, and as such the collector of taxes for said State, within said city.

The above cases are all by writ of error, or appeal, from the Federal and State courts of Virginia, and are but different modes or forms of testing the validity of certain acts of the General Assembly of that State, presenting the terms upon which coupons detached from the bonds of that State shall be received by the collectors of her revenue, in payment of taxes due. The acts referred to being found in session acts 1881–2, and were approved, respectively, on the 14th of January, 1882, and the 26th of January, 1882, full reference to which is found in the printed records.

As the same questions are mainly involved in each case, to

avoid unnecessary repetition, I ask that this brief be read and used as the brief in all of above cases.

The first case is Poindexter vs. Greenhow, No. 588.

This was a warrant in detinue sued out by Poindexter, a taxpayer of said city, against said Greenhow, city treasurer, before the police court of said city. seeking to recover a certain office desk of the value of $30.00, of Poindexter's, levied on by the treasurer for $12.45, taxes due and unpaid, and for which said Poindexter had tendered coupons, issued under Act of Virginia, March 30, 1871, which tender was claimed to be a payment of said taxes and the detention of said levy unlawful. The police justice dismissed the warrant, allowed an appeal to the Hustings Court of Richmond City, which likewise dismissed the appeal for the reasons assigned by the learned Judge on pages 3 et seq of the record in said case.

This decision was clearly right as the coupons tendered were not verified in the mode prescribed by Acts of General Assembly of Virginia, approved Jan. 26th, 1885.

The second case is White vs. Greenhow, No. 589.

This was an action of trespass brought in the Circuit Court of the United States for the Eastern District of Virginia, at Richmond, by White, a resident and citizen taxpayer of Virginia, against said Greenhow, for a trespass, in levying on personal property, not named, of said White's, of the value of $3.000, for the purpose of selling it to pay an amount of taxes likewise not named, and complains that he, the tax-payer, had made, to said treasurer, a tender of coupons issued under said Act of March 30, 1871, and that said treasurer had refused said coupons and levied as stated. The defendant appeared and demurred to the plaintiff's declaration, and the Honorable Judge of said Circuit Court sustained said demur-

rer. The damages in this case were laid arbitrarily at $6,000. but the property levied on was valued at $3,000. The decision of the learned Judge was right, because the declaration was vague and indefinite, not giving the amount of taxes, or even the property levied on, and besides the proper remedy under the State law was not pursued.—See ruling of Judge Bond, page 5 of record.

The third case is Carter vs. Greenhow, No. 590.

This was likewise an action of trespass on the case, in the Circuit Court of United States for said Eastern District of Virginia, at Richmond, by Carter, a resident and citizen taxpayer, against said Greenhow, claiming $200. damages for a levy by the said treasurer on his property, not named, and of nameless value, and for an amount of taxes likewise not named, for which the taxpayer claimed he had tendered coupons issued under Act of March 28th, 1879, and which were refused by the treasurer. To this declaration the defendant demurred and the Hon. Judge sustained same. See page 4 of record.

The decision was correct for same reason as last named case, and because the Circuit Court of United States had no jurisdiction of the amount in controversy, $200. the minimum jurisdictional sum being $500.

The fourth case is Moore vs. Greenhow, No. 905.

In this case, Moore, a resident and citizen taxpayer, of Richmond, Virginia, presented his petition for mandamus to the Circuit Court of the City of Richmond, (State Court) asking that court to compel said Greenhow to receive $75.00 in coupons, issued under Act of March 28, 1879, in payment of a Sample Merchant's License tax, which had been tendered said treasurer by said Moore and refused as unauthorized by law.

The Circuit Court of said city refused to award the rule for mandamus, and the said Moore applied to the Supreme Court of Appeals of the State for a writ of error, but the latter court refused to grant it.

This decision was correct, because the 112th section of an Act of the General Assembly of Virginia, approved March 15, 1884 forbids the payment of license taxes in anything else than money, and forbids payment in coupons. The act is valid as it merely regulates the *police* affairs of the state. A license is a privilege and not a right, and a state can restrict it.

2nd. The coupons were not identified as genuine as required by laws before cited. See refusal of Court of Appeals page 1 of record.

An Act of 7th, Febraury 1884—Acts, 1883-4, of the General Assembly, made the prepayment of the license charge or fee a condition precedent to the emanation of the licence, and without the performance of the condition, nothing passed to the applicant, that said license charge is not a tax in the letter or spirit of the Constitution, nor such as are contemplated by the coupon, but a mere fee, or charge, wholly within the police power of the State, and wholly beyond any contract made by the Commonwealth with her creditors, in her stipulation to receive coupons in payment of all taxes, debts, demands and dues to her. The said license was a mere privilege that might or might not be granted, and the General Assembly had full power to attach any conditions or restrictions to it that it saw proper so to do. The foregoing propositions are supported by the following authorities.

The Legislation on licenses and license tax is a part of the police power of a state and hence does not violate the commerce and other clauses of Federal Constitution.

Cooley Con. Lim., top page. 245; Morg., page 201, 246 and notes.

It is a mere privilege—a *permission* to do a thing and not a vested right.

See *especially:*

Sights vs. Yarnell, 12 Gratt. (Va.) reports, page 292; ex parte Yearger, 11th Gratt., page 655; Stone vs. Mississippi, 101 U. S. Reports, page 814; Chilvers vs. The People, 11th Mich., 43; Wiggin's Ferry Co. vs. East St. Louis, 102 Illinois, 576.

Conditions may be imposed as precedent to granting license as payment in money, &c., &c.

8th Wallace, 168; 7th Wallace, 71; 12th Gratt. (Va.) Reports, 292.

The fifth case is Pleasants vs. Greenhow, No. 941.

This was a bill for an injunction, applied for in the Circuit Court of the United States, for Eastern District of Virginia, at Richmond, by Pleasants vs. said Greenhow, in which he claimed to be a citizen of Richmond, Virginia, a tax-payer, due the State, $36.25 of taxes, that he had tendered therefor, to said treasurer, coupons issued under Act, March 30, 1871 in payment thereof but they had been refused, and a levy was threatened. The defendant demurred and answered said bill, and the learned Judge, on page 8, denied the injunction and dismissed the bill for want of jurisdiction.

This ruling was clearly right, for the various reasons contained on pages 5 and 6 of record, and especially because the amount in controversy was only $36.25, much below the jurisdiction of said United States Circuit Court.

The foregoing is a brief summary of each of said cases, and special references to the main points in same, but there are

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some general objections that apply to one and all of said cases which will now be adduced.

FIRST. The declarations and bills in each case are insufficient in law.

SECOND. Because the said Courts, State and Federal, had no possible jurisdiction of any of said cases, as the General Assembly of Virginia by the Acts, 14, January and 26, January 1882, found Acts, 1881-2, pages 10 and 37, have prescribed the procedure and the very form of action to be adopted in all cases where coupons are sought to be tendered and paid for taxes, debts and demands to the state. The state had the right to prescribe the *remedy* to be pursued.—See case of Antoni vs. Greenhow, decided by this Court in October, 1882 and Louisiana cases.

THIRD. Because it is a fundamental principle in all sovereignties that a state cannot be sued at all unless she consents to be sued, and she has not consented to be sued in any of the modes adopted in these cases, or in any of the courts named.

FOURTH. Because this subject matter of one and all of said suits is the collection of the public revenue of Virginia and the receipt of her coupons therefor, and for this additional reason the courts below should not have entertained them.

FIFTH. The writs of error and appeals in each of these cases should be dismissed as the amount in controversy in each is less than $5,000, the jurisdictional sum necessary for this honorable court.

SIXTH. Because the parties, plaintiff and defendant, are all residents of same state, and no such constitutional questions arise in any of the cases as will justify the interposition of this court.

For the foregoing reasons I ask that one and all of said cases be dismissed.

F. S. BLAIR,
Attorney General of Virginia.